

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 481

Complainant

v.

LACONIA POLICE COMMISSION

Respondent

CASE NO. P-0760:6

DECISION NO. 96-076

APPEARANCES

Representing I.B.P.O., Local 481:

Peter C. Phillips, Esq., Counsel

Representing Laconia Police Commission:

Mark Broth, Esq., Counsel
William R. Wardwell, Consultant

Also appearing:

Robert T. Babineau, Laconia Police Dept.
Tim Cavanaugh, Laconia Police Dept.
Michael K. Nielsen, Laconia Police Dept.
Michael Moyer, Laconia Police Dept.
Steven Clarke, Laconia Police Dept.
Paul Fitzgerald, Esq., Laconia Police Commission
R. W. Bray, I.B.P.O., Local 481
D. Jameson, I.B.P.O., Local 481
Michael S. Monahey, I.B.P.O., Local 481
Robert Damore, I.B.P.O., Local 481
Bruce N. Cheney, Bureau of Emergency Communications

BACKGROUND

The International Brotherhood of Police Officers, Local 481 (Union) filed unfair labor practice charges on April 9, 1996, alleging violations of RSA 273-A:1 (e), (a) and (c). The petition was answered by the City of Laconia Police Commission (Commission) on April 22, 1996. The matter was heard before the PELRB on August 13, 1996. At the conclusion of the Union's case, the Commission moved to dismiss the charges for failure to state a claim which might be addressed under RSA 273-A:5. The motion was held in abeyance while the hearing proceeded.

FINDINGS OF FACT

1. The City of Laconia Police Commission employs police officers and others to operate its police department and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. The International Brotherhood of Police Officers Local 481 is the certified bargaining agent for "All Sergeants, Detective Sergeants, Corporals, Detective Corporals, Patrol Officers and Detectives" employed with the Laconia Police Department. (Union No. 1).
3. During the winter of 1993-1994, the Laconia Police Department incurred criticism for a top heavy command structure according to testimony of Chief Robert Babineau. A study of the Department's structure was undertaken. It resulted in the Winkel Report (Commission No. 7). This report, dated February 15, 1994, noted that sergeants were delegated minimal authority and that watch commanders (lieutenants) performed work usually done by first-line supervisors. The report suggested restructuring the organization.
4. On March 10, 1994 the Laconia Police Commission voted to reorganize its command structure and a notice announcing the restructure was posted on April 29, 1994. (Comm. No. 2). The notice read, in pertinent part:

As part of this reorganization, a new job description for "Uniformed Sergeants" ...has been created and authorized. The new job description provides Uniformed

Sergeants with substantial new supervisory responsibilities.

Subject to PELRB approval, the Uniformed Sergeants will be non-represented supervisory positions. The existing "Sergeant" rank and job description will be eliminated. Details regarding the impact of this change will be discussed with your collective bargaining representatives.

Examinations to fill the sergeant positions were announced tentatively scheduled for August, 1994, six months hence.

5. Reorganization of the Laconia Police Department has been before the Public Employee Labor Relations Board on two occasions. On April 13, 1994, the Laconia Police Commission filed a petition to remove the position of sergeant from the bargaining unit. The petition was withdrawn as premature (Commission No. 6) at the hearing of June 14, 1994. Then, the Union filed an unfair labor practice charge to enjoin the examination for the new sergeant's position. The matter was heard on August 9, 1994. The decision addressed the need to bargain the impact of reorganization (Joint No. 1) and impact bargaining took place. Subsequently, the Union demanded to bargain the new uniformed sergeant's position and was refused.
6. As a result of impact bargaining, the parties signed a Letter of Agreement on August 29, 1994 (Commission No. 1). In that letter, the parties agreed that the position of sergeant should be vacated and those holding the position should assume "the duties, responsibilities, uniform and insignia of 'Patrolman'" on September 4, 1994. Their hourly pay has been "red circled" to remain the same though no overtime will be available to them. Two rounds of examinations have taken place and five non-bargaining unit sergeant positions have been filled.
7. The new uniformed sergeants presently employed by the City of Laconia Police Commission serve as watch commanders with authority to call in supplementary staff; discipline, including suspension of a subordinate officer; evaluate; attend staff

meetings with the Chief. They determine probable cause for arrest, are able to revoke tickets and to initiate internal investigations. According to Chief Babineau, each watch commander is the chief for eight hours a day. Prior to reorganization, lieutenants were in charge as watch commanders, but now, Chief Babineau states, the sergeants run the Department.

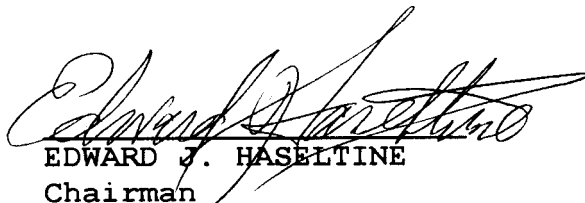
DECISION AND ORDER

The Board's Decision No. 94-79 (August 17, 1994) upholds the City's right to control its organizational structure, RSA 273-A:1 XI, while respecting the Union's right to bargain the impact of certain changes. The Letter of Agreement dated August 29, 1994, contains the accommodations made by the parties as a result of impact bargaining following the reorganization. The agreement acknowledges the voidance of the old sergeant position which remains in the bargaining unit in name. The newly created uniformed sergeant position exercises significant supervisory discretion and so is not a bargaining unit position. Therefore, it is not subject to collective bargaining.

No unfair labor practice by the Commission has been shown. The pending Motion to Dismiss is granted and the unfair labor practice charges are dismissed.

So ordered.

Signed this 27th day of August, 1996.


EDWARD J. HASELTINE
Chairman

By majority vote. Chairman Edward J. Haseltine and Member Richard W. Roulx voting in the majority and Member E. Vincent Hall voting in the minority.